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November 15, 2019

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W., Room TW-B204  
Washington, D.C. 20554

Re: WC Docket 18-89

Dear Ms. Dortch:

On November 13, 2019, Monica Akin of NE Colorado Cellular, Inc., dba Viaero Wireless, along with undersigned counsel, met with Commissioner Rosenworcel and Umair Javed, and undersigned counsel met with Trent Harkrader, to discuss the Commission's upcoming Report and Order, Order, and Further Notice of Proposed Rulemaking in the above-captioned proceeding (the "*Circulated Order*").<sup>1</sup>

At the outset of each meeting, Viaero Wireless made clear that the company's owners fully understand the need to provide secure communications throughout the United States. If it is the U.S. government's decision to replace equipment from Huawei/ZTE or other companies that pose a threat to our nation's security, then Viaero Wireless will undertake to meet the challenge.

Our discussions focused primarily on language in the proposed *Circulated Order* that would require Universal Service Fund ("USF") recipients to:

clearly demonstrate that no USF funds were used to purchase, maintain, improve, modify, operate, manage, **or otherwise support** any equipment or services produced or provided by a covered entity (emphasis added).<sup>2</sup>

Without providing bright lines, the Commission goes on to state that it believes it unlikely that USF recipients will be able to demonstrate that no USF funds were used, "on any

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<sup>1</sup> FCC-CIRC1911-01 (Oct. 29, 2019) available at <https://docs.fcc.gov/public/attachments/DOC-360522A1.pdf>.

<sup>2</sup> *Circulated Order* at ¶ 66 (emphasis added).

part of the project” and that all labor and “any and all related expenditures” connected to the installation of cell site equipment provided by a covered company (i.e., Huawei, ZTE, or any other company designated by the Commission) would be considered ineligible expenditures.<sup>3</sup> While the *Circulated Order* is not clear, it appears that a USF recipient will either be in the position of submitting an allocated expense report for approval after expenditures are made, or requesting a waiver to allow certain “related expenditures” to be covered by USF support.

Viaero Wireless stated that it would be able to prevent USF support from being expended on equipment and services produced or provided by a covered entity, as it routinely allocates expenses for accounting purposes in great detail. Every component part of a project, as well as the labor, can be allocated into USF/non-USF categories. Accordingly, Viaero Wireless urged the Commission to remove the draft language, “or otherwise support,” and related language expressing doubt that carriers will be able to allocate expenses into appropriate categories. Unless this language is removed, the resulting uncertainty will freeze Viaero Wireless’ ability to move forward with any project and cause potentially irreparable harm to the company’s ability to provide service.

The harmful effect of retaining this overbroad language can be illustrated by how the requirements of the *Circulated Order* would apply to the installation of an American-made backup generator at a cell site that provides electricity to equipment provided by a covered company. A backup generator improves the health and safety of citizens and first responders. It improves overall network reliability. It improves the quality of service. It does not jeopardize national security. It fulfills the directive Congress gave the FCC to use USF support to ensure that services in rural areas are reasonably comparable to those in urban areas.<sup>4</sup>

Yet, the overbroad language discussed above could restrict carriers from using USF support to install a backup generator. If this is the case, carriers may choose not to do the backup generator installation at all. This would frustrate the essential purpose of the federal universal service fund: to provide support for investments in high-cost areas that private businesses might not otherwise choose to make, to *preserve and advance* universal service throughout rural and high-cost areas.<sup>5</sup>

Retaining the overbroad language in the *Circulated Order* could prohibit federal USF support from being used to purchase equipment made in the United States, or for American workers to provide labor for any number of other essential and proper purposes, such as for example:

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<sup>3</sup> *Id.*

<sup>4</sup> See, 47 U.S.C. § 254(b)(3).

<sup>5</sup> See, 47 U.S.C. § 254(b)(5), 254(d).

- Tower purchase and construction
- Purchase and installation of concrete
- Expanding a base station shed to accommodate new equipment
- Replacing a base station air conditioning unit
- Purchase and installation of transmission lines
- Purchasing and installing fiber from switch to cell site
- Building a road to a new cell site

The list of possible related expenditures is so broad as to make the proposed language unworkable. To be clear, Viaero Wireless is completely willing and able to use its own funds to install or maintain equipment provided by a covered company, and segregate those expenditures in a clear and verifiable way, so that the Commission can be sure that federal USF support is only used for the kinds of expenditures set forth above. In its legitimate desire to prohibit USF expenditures on equipment or services produced and provided by covered companies, the Commission should not, inadvertently or otherwise, restrict an American company from using USF to purchase goods made in America and employ American labor.

Viaero Wireless also noted that the Commission recognized that the new rule might encourage some providers to replace equipment that is not secure, prior to the end of its life cycle, which would serve the public interest.<sup>6</sup> This sentiment is misplaced, because the entire purpose of the Notice of Proposed Rulemaking accompanying the *Circulated Order* is to, “make the requirement to remove covered equipment and services by ETCs contingent on the availability of a funded reimbursement program.”<sup>7</sup>

Viaero Wireless urged the Commission not to use the overbroad language in paragraph 66 of the *Circulated Order* to squeeze carriers into abandoning equipment from covered companies before a reimbursement mechanism is in place. Our understanding is that this is not the Commission’s intent, but it will surely be the result if the Commission were to retain the overbroad language. And the results for small wireless carriers that have recently made significant capital investments, some of which have not yet been paid for, could be catastrophic. A reimbursement mechanism **must** be in place before carriers are forced to replace an entire network.

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<sup>6</sup> *Circulated Order* at ¶ 69.

<sup>7</sup> Notice of Proposed Rulemaking at ¶ 112.

Should you have any questions, please contact undersigned counsel directly.

Sincerely,

A handwritten signature in black ink, appearing to read "D. LaFuria".

David A. LaFuria  
Counsel for NE Colorado Cellular,  
dba Viaero Wireless

cc: Hon. Jessica Rosenworcel  
Umair Javed  
Trent Harkrader  
Monica Akin